

## **INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 1, VOLUNTARY PETITION**

### **I. INTRODUCTION**

This form, known as a “voluntary petition” must be used by a debtor to begin a bankruptcy case. Filing this petition is how an individual or other entity “declares bankruptcy.” Filing the petition also generally operates to stop action by creditors to collect their debts, a feature of the bankruptcy process described more fully below. Before filing a bankruptcy case, a debtor may want to read “Bankruptcy Basics,” which is available on the U.S. Bankruptcy Courts page of the Judiciary’s Internet website at <http://www.uscourts.gov/bankruptcycourts.html>. Access to “Bankruptcy Basics” also is available under “Links to Related Material” in the bankruptcy forms section of the Federal Rulemaking page of the website at <http://www.uscourts.gov/bkforms/>.

The voluntary petition also provides the bankruptcy court with the basic information needed to begin the case. Although some of the information asked for in Official Form 1 will be repeated in greater detail in the schedules and statements that also must be filed, the court needs certain data immediately to make a rough estimate of the resources needed to handle the case, to monitor multiple and repeat filings, to assign cases to judges, and to provide certain statistical information that the court is required by law to compile.

### **II. APPLICABLE LAW AND RULES**

Filing a voluntary petition with a bankruptcy court under chapter 7, 9, 11, 12, or 13 starts a bankruptcy case under that chapter. 11 U.S.C. §§ 301, 302. It also constitutes an “order for relief.” 11 U.S.C. §§ 301(b), 302(a). Similarly, a joint case is started by the filing of a single petition by an individual and that individual’s spouse. 11 U.S.C. § 302(a). Filing a voluntary petition under chapter 15 is a request for relief under that chapter.

Section 109 of the Bankruptcy Code sets forth the eligibility requirements for debtors filing under chapters 7, 9, 11, 12, and 13. Specific requirements regarding a debtor’s eligibility to file under the various chapters are discussed below under “Chapter or Section of Bankruptcy Code Under Which the Petition is Filed.”

Rule 1002 of the Federal Rules of Bankruptcy Procedure (referred to as “Bankruptcy Rule” or “Fed. R. Bankr. P.”) requires a petition to be filed with the clerk of court. The case should be filed in an appropriate bankruptcy court location (venue), based on the criteria established in 28 U.S.C. § 1408, discussed below under “Information Regarding Debtor – Venue.”

The filing of a bankruptcy case requires, in addition to the petition, the filing of schedules listing the debtor’s property and debts, a statement of financial affairs, a statement of “current monthly income” by all individual debtors with primarily consumer debts, and several other documents. 11 U.S.C. § 521; Fed. R. Bankr. P. 1007; local rules of each court. These documents include a mailing list or “matrix” containing the names and addresses of the creditors and others that

should receive notices from the court in the case. Bankruptcy Rule 1007(a)(1). In addition, every individual debtor must submit to the court a statement of the debtor's full social security number. Rule 1007(f), Fed. R. Bankr. P. Each bankruptcy court has its own requirements concerning the format of the mailing list, and anyone planning to file a bankruptcy case should contact the clerk's office ahead of time to obtain information about the specific requirements of the court in which the case will be filed. (See instructions under "United States Bankruptcy Court," below.) A list of the documents required to file a bankruptcy case under chapter 7, 11, 12, or 13 can be found in Procedural Form B 200, "Required Lists, Schedules, Statements and Fees." The form is available under "Procedural Forms and Instructions" in the bankruptcy forms section of the Judiciary's website at <http://www.uscourts.gov/bkforms/>. Form B 200 also is accessible through the forms section of the Bankruptcy Courts page of the website at <http://www.uscourts.gov/bankruptcycourts.html>. A bankruptcy court also may require additional documents by local rule. It is important to contact the court by telephone and check the court's website to determine what the particular court's requirements are.

If the schedules and other documents are not prepared and ready to be filed at the same time the petition is filed, Bankruptcy Rule 1007(c) allows 15 days for completing and filing most of them. The mailing list, individual debtor's statement of social security number, and documentation concerning prepetition credit counseling, however, must accompany the petition. Fed. R. Bankr. P. 1007(c). Moreover, in a case under chapter 9, 11, 12, or 13 of the Code, a plan for repaying creditors must be filed according to the time limits and criteria set forth in 11 U.S.C. §§ 941, 1121, 1221, 1321, and Bankruptcy Rules 3015, 3016.

By signing, filing, or submitting a petition, schedule, statement, or other paper with the court, the debtor and the debtor's attorney (if any) are certifying – to the best of each person's knowledge, information and belief, formed after a reasonable investigation under the circumstances – that the petition, schedule, statement, or other paper meets the evidentiary and legal standards set out in Bankruptcy Rule 9011(b). Under the rule, each person also certifies that the petition, schedule, statement, or other paper is not being presented to the court for any improper purpose such as causing unnecessary delay or to harass. After giving notice and an opportunity to respond, the court may impose sanctions for violations of the rules. 11 U.S.C. §§ 707(b)(4)(A) and (B); Fed. R. Bankr. P. 9011(c).

Before a bankruptcy case is commenced by an individual whose debts are primarily consumer debts, the clerk must give the individual written notice containing a brief description of chapters 7, 11, 12, and 13 and the general purpose, costs and benefits of proceeding under each one, along with a brief description of the types of services available from credit counseling agencies. The notice also must contain statements informing the debtor that a person who knowingly and fraudulently conceals assets or makes a false statement under penalty of perjury in connection with a bankruptcy case is subject to fine, imprisonment, or both, and that all information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General. 11 U.S.C. § 342(b). (Consumer debts are debts incurred by individuals primarily for personal, family, or household purposes. 11 U.S.C. § 101(8).) The debtor may receive the notice from the debtor's

attorney, from a non-attorney bankruptcy petition preparer, or by reading and signing a copy of Director's Procedural Form 201.

The signature block for individual debtors on Official Form 1 includes a declaration that, if the case is being filed under chapter 7 by an individual with primarily consumer debts, the debtor is aware of the debtor's right to proceed under chapters 7, 11, 12, or 13 and the relief available under each chapter. If no attorney or non-attorney bankruptcy petition preparer signs the petition, this block also provides for the debtor to declare that the debtor obtained and read the notice given under § 342(b) of the Code. Exhibit B to Official Form 1, which is to be completed by the attorney for an individual consumer debtor, includes the attorney's declaration that the attorney has advised the debtor that the debtor may proceed under chapter 7, 11, 12, or 13, has explained the relief available under each chapter, and has provided to the debtor the notice required by § 342(b). 11 U.S.C. § 527(a)(1).<sup>1</sup>

In addition to the petition, lists, schedules, and statements, Bankruptcy Rule 1006(a) requires every petition to be accompanied by the filing fee required by law. See 28 U.S.C. § 1930(a). Other fees have been prescribed in the Bankruptcy Court Miscellaneous Fee Schedules issued in accordance with 28 U.S.C. § 1930(b), and some of these also are payable at the time of filing the petition. An individual debtor may file an application to pay the filing fee in installments. Fed. R. Bankr. P. 1006(b). An individual debtor who files under chapter 7 and meets certain eligibility requirements may apply for a waiver of the filing fee. 28 U.S.C. § 1930(f). (See "Filing Fee," below.)

With certain exceptions and limitations set forth in § 362 of the Bankruptcy Code, the filing of a petition "operates as a stay, applicable to all entities." 11 U.S.C. § 362(a). This stay takes effect automatically, immediately upon the filing of a petition. The automatic stay essentially places a freeze on the collection of debts incurred before the filing of the petition. Creditors must cease all existing collection activities against the debtor and the debtor's property and are forbidden to initiate new ones. Section 362(b) provides a list of exceptions to the stay, and other subsections § 362 provide additional exceptions and limitations, particularly with respect to expired leases of residential real property and successive cases filed by one debtor or involving a single piece of real property.

It is important to remember that the filing of a bankruptcy case is a public transaction. The information on file with the court, with the exception of an individual debtor's social security number and tax returns, will remain open to review by any entity, including any person, estate, trust, governmental unit, and the United States trustee (an official of the United States Department of Justice). 11 U.S.C. §§ 101, 107; 28 U.S.C. § 586. In addition to being available for review in the

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<sup>1</sup>The declarations concerning the debtor's right to proceed under chapters 7, 11, 12, or 13 were added to Official Form 1 by § 322 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353.

clerk's office, papers filed in cases also may be viewed over the Internet by subscribers to the federal courts' PACER service or similar service of the local court.

A debtor has a right to amend a voluntary petition as a matter of course at any time before the case is closed. Fed. R. Bankr. P. 1009(a). Bankruptcy Rule 1009(a) requires the debtor to give notice of any amendment to the trustee and to any entity affected by the amendment.

### **III. DIRECTIONS**

#### **United States Bankruptcy Court**

A debtor must identify the judicial district in which the debtor intends to file the petition, for example, "Eastern District of California." To find the correct name of the district, a debtor may refer to the local telephone directory, which should have a listing in the blue pages for "United States Government." A debtor also may look at a bankruptcy court's website to obtain this and other useful information, including the telephone number for the bankruptcy clerk's office. The "uscourts.gov" website offers links to the websites of all the federal courts, including the bankruptcy courts. A debtor can consult the list displayed under "Court Links" to identify the particular court that may be nearest. In the telephone directory, a debtor should look under category "C" for courts and locate the listing for "District Court for the . . . ." The bankruptcy court will be listed under the district court. Some telephone directories may list courts for more than one federal judicial district. If a debtor is in doubt about the correct district or the correct name of the district, the debtor should check with the bankruptcy court clerk's office before proceeding.

#### **Names/Identification Numbers**

Bankruptcy Rule 1005 requires a debtor filing a voluntary petition to include the "name, employer identification number [if any], last four digits of the social security number, any other federal tax identification number, and all other names used" within a certain number of years before filing the petition. The Official Form has been amended to require a debtor to provide all names used during the eight years before filing the petition. This amendment conforms to amendments to the Bankruptcy Code enacted in 2005; Bankruptcy Rule 1005, however, has not yet been amended to conform to the 2005 amendments to the Code. A debtor should follow the directions printed on the form. Examples of other names used by a debtor include trade names, names used in doing business, former married name(s), and maiden name (if used within eight years before filing the petition). They should be furnished in the space provided. If there is not sufficient room for all such names on the form itself, the list should be continued on an additional sheet attached to the petition. The debtor's name also should be inserted at the top of the second and third pages of Official Form 1.

Separate spaces are provided for the name, address, and other information about joint debtors filing bankruptcy together in a single (joint) case. Only a husband and wife may file a joint

bankruptcy case. 11 U.S.C. § 302. If the bankruptcy case is filed by one person, a corporation, or a partnership, the “joint debtor” spaces on the petition should be left blank.

Complete information helps creditors to (1) correctly identify the debtor when they receive notices and orders from the court, (2) comply with the automatic stay, (3) file a proof of claim, and (4) exercise other rights given to them by the Bankruptcy Code. It is important to make sure that all creditors know about the bankruptcy proceeding and are allowed to exercise their rights in the case. A debt owed to a creditor who is not given proper notice of the bankruptcy may not be “discharged” or “forgiven,” and the debtor may continue to be liable for payment of the debt despite having completed the bankruptcy case. Therefore, it is essential to provide not only the current legal name(s) but all name(s) used by the debtor and any joint debtor during the specified period (eight years).

### **Addresses/Location of Principal Assets**

The form requires both a street address and any separate mailing address used by the debtor, as well as any separate addresses used by a joint debtor. Thus, the debtor(s) must include the complete street address and mailing address, if different, in the appropriate boxes. Married debtors living together can write “same” in the joint debtor address box. If an individual, the debtor must state the county of residence in the box provided. If the debtor is a business, the debtor should state the county where the principal place of business is located. A business debtor should designate the location of the principal assets of the debtor, if different from the street address.

### **Type of Debtor**

A debtor can be an individual (includes both individuals in a joint case), a corporation (includes LLCs and LLPs), or a partnership. (In a partnership case, if all the general partners do not consent to the filing of the case, § 303(b)(3) of the Bankruptcy Code provides for the filing of an involuntary petition by “fewer than all of the general partners,” using Official Form 5.) The debtor must check one box. If a debtor does not fit into any of the categories listed, a box labeled “other” is provided, together with a space in which to state the type of entity.

### **Nature of Business**

The Bankruptcy Code contains provisions that apply only to certain types of debtors, and cases involving them require special procedures. In addition, the courts are required to compile statistics concerning their caseloads and to respond to inquiries about the types of cases that have been filed. If any of the categories listed in this section of the form describe the debtor, the debtor should check as many boxes as apply. For example, if the debtor is a nonprofit hospital, the debtor should check both the box labeled “Health Care Business” and the box labeled “Nonprofit Organization qualified under 26 U.S.C. § 501(c)(3).”

## **Chapter of Bankruptcy Code Under Which the Petition is Filed**

Only a “person,” (defined by § 101 of the Bankruptcy Code to include an individual, partnership, and corporation), that resides or has a domicile, a place of business, or property in the United States, or is a municipality, may be a debtor in a bankruptcy case. 11 U.S.C. § 109(a). Section 109 of the Bankruptcy Code also states other eligibility requirements for individual debtors and the specific requirements for filing under various chapters. To be eligible to file under any chapter, an individual debtor must obtain a briefing from an approved nonprofit budget and credit counseling agency within 180 days before filing the petition. 11 U.S.C. § 109 (h). Section 109(h) contains certain very narrow exceptions to this requirement.

When a case is filed under a certain chapter, various rights and duties arise for both the debtor and creditors. Although the case can be converted to another chapter later in the proceeding, it is important to file under the chapter that best suits the debtor’s needs and under which the debtor is legally eligible to file. A brief summary of the requirements of each chapter follows.

**Chapter 7:** A “person” (defined by § 101 of the Bankruptcy Code to include an individual, partnership, and corporation, but not a governmental unit) may be a debtor under chapter 7 only if that person is not a (1) railroad or (2) an insurance company, bank, small business investment company, or credit union, as specified in § 109(b) of the Code. 11 U.S.C. § 109(b). Stockbrokers and commodity brokers can only file under this chapter, which contains special provisions governing their cases. Special provisions also apply to “health care business” debtors, as defined in § 101(27A) of the Code.

**Chapter 9:** Only a municipality or municipal corporation authorized by state law to file bankruptcy may be a debtor under chapter 9. 11 U.S.C. § 109(c).

**Chapter 11:** Only a person that may be a debtor under chapter 7 (but not a stockbroker or commodity broker) and a railroad may be a debtor under chapter 11. 11 U.S.C. § 109(d).

**Chapter 12:** Only a “family farmer,” as defined in § 101(18), or a “family fisherman,” as defined in § 101(19A) with regular annual income may be a debtor under chapter 12. 11 U.S.C. § 109(f).

**Chapter 13:** Relief under chapter 13 is limited to an individual, or individual and spouse, with regular income, whose debts (on the date of filing the petition) are within the monetary limits set forth in § 109(e) of the Bankruptcy Code. These dollar limits are adjusted for inflation every three years according to a formula prescribed in § 104(b) of the Code. In October 2005 those limits were \$307,675 for unsecured debts (*i.e.*, those for which a creditor does not have a lien or, if the property on which a creditor has a lien is not worth enough to pay the creditor in full, that portion of the debt which exceeds the value of any pledged property, or “collateral”) and \$922,975 for secured debts (*i.e.*, those for which a creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have a lien on the property). Examples of unsecured debts are credit card bills and unpaid doctor bills. Examples

of secured debts are the mortgage on a debtor's house and the loan that finances the purchase of the debtor's automobile. If the debt(s) or account(s) is (are) contingent or unliquidated, chapter 13 may be available even to a debtor whose creditors assert that the debtor owes amounts higher than the limits set forth in the Code. (A claim is contingent if the debtor's liability depends on the occurrence of a certain event, such as where the debtor is a cosigner on another person's loan, and that person fails to pay. A claim is unliquidated when the amount owed has not been determined.)

**Chapter 15:** A case under chapter 15 is commenced when a foreign representative files a petition for recognition by the bankruptcy court of a foreign proceeding in which the foreign representative has been appointed. 11 U.S.C. §§ 101(23) and (24) and § 1504. The filing of a petition under chapter 15 commences a case that is ancillary to the foreign proceeding. 11 U.S.C. § 1504. The foreign proceeding may be a "foreign main proceeding" or a "foreign nonmain proceeding," both of which are defined in § 1502 of the Code. The type of foreign proceeding affects the authority that the foreign representative can exercise later. Accordingly, the foreign representative must specify whether the foreign proceeding is "main" or "nonmain." Once a court in the United States has granted recognition of the foreign proceeding, the foreign representative of a "foreign main proceeding" may file a voluntary case for the debtor under any other chapter for which the debtor is eligible.

The debtor or foreign representative should mark the checkbox for the chapter of the Code under which the petition is filed.

## **Filing Fee**

Commencing a bankruptcy case requires the payment of a filing fee. Filing fees for cases under all chapters of the Bankruptcy Code are prescribed in § 1930(a) of title 28, United States Code (28 U.S.C. § 1930(a)). As of April 9, 2006, the filing fee for a chapter 7 case is \$245; for a chapter 13 case, it is \$235; for a chapter 9 case, it is \$1,000; for a chapter 11 case, it is \$1,000; and for a chapter 12 case, it is \$200.

A person filing a bankruptcy case also must pay a \$39 administrative fee in addition to the filing fee prescribed under 28 U.S.C. § 1930(a). Chapter 7 debtors also must pay a \$15 trustee surcharge. These miscellaneous fees (\$39 administrative fee and \$15 trustee surcharge) are part of the Bankruptcy Court Miscellaneous Fee Schedule prescribed in accordance with 28 U.S.C. § 1930(b). The fees required to file a chapter 7 case total \$299, whereas the fees to file a chapter 13 case total \$274. Section 1930(a)(7) permits an individual debtor filing a voluntary case or joint case to pay the filing fee in installments. Section 1930(f) authorizes the court to waive the filing fee for an individual filing under chapter 7 if the court determines that the individual meets the criteria set forth in § 1930(f).

Bankruptcy Rule 1006 requires that an individual debtor either: (1) pay the fee in full when filing the petition, (2) file a completed application to pay the fee in installments, or (3) if the debtor files under chapter 7, file an application for waiver of the fee showing that the debtor meets the

qualifications for waiver set forth in 28 U.S.C. § 1930(f). The miscellaneous fees mentioned above also may be paid in installments or waived by the court.

With respect paying the fee in installments, the rule limits the number of installments to four, with the final installment due not later than 120 days after the filing of the petition. The court can extend the time for paying any installment, but the debtor must file a motion explaining the reason an extension is needed. In any case, the last installment must be paid not later than 180 days after the filing of the petition. With respect to waiving the fee, § 1930(f) establishes a ceiling on the debtor's income to be eligible for a waiver and authorizes the Judicial Conference of the United States to establish procedures for the application and determination by the court. These procedures can be reviewed under "2005 Bankruptcy Act Resources" on the Bankruptcy Courts page of the Judiciary's website at <http://www.uscourts.gov/bankruptcycourts.html>.

To pay the fees in installments, Official Form 3A must be completed and filed with the petition. If the debtor is to pay the fees in installments, the filing fee must be paid in full before the debtor or chapter 13 trustee may make any further payment to an attorney or other person who renders services to the debtor in connection with the case. To apply for a waiver of the filing fee, Official Form 3B must be completed and filed with the petition. Fed. R. Bankr. P. 1006.

Check the appropriate box on Official Form 1 to indicate whether the fee is being paid or an application to pay in installments or for waiver of the fee is being filed.

## **Nature of Debts**

An individual debtor, depending on the circumstances of the case, may check either "Consumer/Non-Business" or "Business" to describe the nature of the debts that gave rise to the bankruptcy case. A consumer debt is defined in § 101 of the Bankruptcy Code as a debt incurred by an individual primarily for a personal, family, or household purpose. A business debt is one incurred to start or continue a business or profession. Even in a case filed by an individual or married couple, if debt related to the operation of a business predominates, the debtor should check the box marked "Business." A debtor that is a corporation or partnership should check the box marked "Business."

## **Chapter 11 Debtors**

If a chapter 11 debtor has \$2 million or less in debt on the date the petition is filed, the case may be one in which the debtor is a "small business debtor" as defined in § 101(51D). In a chapter 11 case involving a small business debtor, certain accelerated deadlines apply, and special procedures may be utilized. Although not every chapter 11 debtor with debts of \$2 million or less is a "small business debtor," and the debtor's status may change during the pendency of the case, the debtor, the court and the United States trustee all need to know at the outset whether there is a possibility that a chapter 11 debtor may be a "small business debtor." Accordingly, the form requires the chapter 11 debtor to identify at the outset of the case whether it believes it is a small



business debtor and to disclose whether its debts are less than \$2 million by checking the appropriate boxes.

### **Statistical/Administrative Information**

This section requests the debtor to predict whether funds will be available for distribution to unsecured creditors by checking on of the two boxes provided. On the basis of this estimate by the debtor, the clerk may notify creditors in a chapter 7 case that it appears there are no assets from which they may be paid, and it is not necessary for them to file claims unless notified by the clerk later to do so. Bankruptcy Rules 2002(e) and 3002(c)(5).

The debtor also is asked to indicate in the boxes provided the **estimated** number of creditors, amount of assets, and amount of liabilities. This information is used by the clerk to complete statistical reports that are required by law and to advise the court of what to expect from the case in terms of size and judicial time. (See 28 U.S.C. §§ 159 and 604.)

### **Prior Bankruptcy Case Filed Within Last 8 Years**

A chapter 7 discharge order eliminates a debtor's legal obligation to pay any debts (with some exceptions) that existed on the date the bankruptcy case was filed. Under § 727(a)(8) of the Bankruptcy Code, a debtor is not entitled to a chapter 7 discharge if the debtor has been granted a discharge in a chapter 7 or chapter 11 case begun within eight years before the date of the filing of the petition. Under § 727(a)(9) of the Code a debtor is not entitled to a chapter 7 discharge if the debtor received a discharge in a chapter 12 or 13 case commenced within six years before the date of the filing of the petition, unless (1) the plan payments totaled 100% of the allowed unsecured claims, or (2) the plan payments totaled 70% of such claims, the debtor proposed the plan in good faith, and it was the debtor's best effort. Section 109(g) of the Bankruptcy Code restricts repeat filings at intervals shorter than 180 days under certain circumstances even if no discharge was granted.

Disclosure of earlier bankruptcy filings puts the court and any trustee on notice that an investigation may be needed. It is intended to alert the trustee to cases in which an objection to discharge pursuant to § 727(a)(8) or (a)(9) or a motion to dismiss under § 109(g) may be appropriate. The debtor may be called upon to explain the circumstances of having filed multiple cases. These may not prevent a discharge in the new case, but the court will need to make a determination based on the actual facts in each case.

The debtor should report the location in which any prior bankruptcy case was filed, for example, "District of Maryland," in the space provided. The case number of the prior case and the date the petition was filed should be stated in the appropriate spaces. A debtor should be sure to list all prior bankruptcy cases and attach additional sheets, if necessary.

### **Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor**

Information about any pending bankruptcy cases related to the debtor's case signals the clerk to assign the case to the judge to whom any related case has been assigned. The debtor should report the name of any spouse, partner, or affiliate that has a pending case (one that has not been closed) under the heading "Name of Debtor." The debtor should include the case number, date the petition was filed, relationship, district where the case is pending, and the judge assigned to the case in the spaces provided. Additional sheets may be attached if there is more than one pending case.

### **Exhibit A**

The debtor is required to complete and file Exhibit "A" only if the debtor is a corporation requesting relief under chapter 11 and if the debtor is required to file periodic reports with the Securities and Exchange Commission ("SEC") pursuant to § 13 or § 15 of the Securities Exchange Act of 1934. If required, the debtor should check the box on page 2 and complete and attach the Exhibit "A" form. The completed form supplies the SEC with information that the SEC needs to determine how actively (or whether) to monitor the chapter 11 case.

### **Exhibit B**

Exhibit B, which is included in the petition itself, is to be signed by the attorney for an individual/joint consumer debtor. The exhibit, which is required by § 322 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, is a declaration that the attorney has advised the debtor(s) that the debtor(s) may proceed under chapter 7, 11, 12, or 13 of the Code and that the attorney has explained the relief available under each chapter. Exhibit B also includes a certification by the attorney that the attorney has delivered to the debtor the notice required by § 342(b) of the Code. This notice describes the various chapters of the Code under which an individual debtor may file and the types of services available from credit counseling agencies. It also states that all information supplied by a debtor in the case is subject to examination by the Attorney General of the United States, and warns that criminal penalties may be imposed on a debtor who fraudulently conceals assets or makes a false statement. A debtor not represented by an attorney should leave Exhibit B blank. The signature section for individual debtors on page 3 includes a declaration by a chapter 7 consumer debtor concerning the debtor's awareness of all the chapters available to the debtor and, if the debtor is an individual filing under any chapter and not represented by an attorney or assisted by a bankruptcy petition preparer who signs the petition, stating that the debtor has obtained and read the § 342(b) notice. The notice is set out in Procedural Form B 201, "Notice to Individual Consumer Debtor Under § 342(b) of the Bankruptcy Code." Form B 201 is available under "Procedural Forms and Instructions" in the bankruptcy forms section of the Federal Rulemaking page of the Judiciary's website at <http://www.uscourts.gov/bkforms/>. Form B 201 also can be accessed through the Bankruptcy Courts page of the website at <http://www.uscourts.gov/bankruptcycourts.html>.

## **Exhibit C**

Exhibit “C” requires the debtor to disclose whether the debtor owns or has possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety. The debtor must check the box marked “Yes” or “No,” according to the facts of the case. If any such property exists, the debtor must complete and attach Exhibit “C” describing the property, its location, and any potential danger it poses. Exhibit “C” will alert the United States trustee and any person selected as trustee that immediate precautionary action may be necessary.

## **Certification Concerning Debt Counseling by Individual/Joint Debtor(s)**

Before an individual or joint debtor can file a bankruptcy case, section 109(h) of the Bankruptcy Code requires the debtor to receive a briefing from an approved nonprofit budget and credit counseling agency. The briefing may be an individual or group briefing and may be conducted in person, by telephone, or over the Internet. The briefing must outline the opportunities for available credit counseling and must assist the debtor in performing a related budget analysis. The clerk of the bankruptcy court maintains a list of approved credit counselors in the district that is available to the public at the office of the clerk and on the court’s website.

11 U.S.C. § 111(a)(1). Interim Bankruptcy Rule 1007(c) requires the debtor to file with the petition a certificate from the credit counseling service describing the services provided and a copy of any debt repayment plan developed through the credit counseling service. Exceptions to this requirement are limited to those provided in §§ 109(h)(2) and (h)(4). If a debtor requests credit counseling but is unable to obtain the services required by the Code within five days of requesting them, § 109(h)(3) provides a limited waiver of the credit counseling requirement. The debtor must attach to the petition a certification of “exigent circumstances,” and obtain the credit counseling within 30 days after filing the petition. The debtor should check the appropriate box, based on whether the debtor has obtained the required counseling or not, and attach the required documents.

## **Information Regarding the Debtor — Venue**

An individual debtor generally should file a bankruptcy case in the federal judicial district in which the individual resides or maintains a domicile. In a business case, the debtor should file in the district in which the debtor maintains a domicile, a residence, a principal place of business in the United States, or in which the debtor’s principal assets are located. If the debtor has not maintained a domicile, residence, principal place of business, or principal assets in one federal judicial district for the entire 180 days before filing the bankruptcy case, the debtor should file in the district in which its domicile, residence, principal place of business, or principal assets were located for the longest portion of the 180 days. 28 U.S.C. § 1408. This provision applies also to a corporation, partnership, or other entity. For this purpose, a corporation has a domicile in its state of incorporation. A corporation partnership, or other entity also can file in any district in which its “affiliate” (as defined in § 101 of the Bankruptcy Code), general partner, or partnership has a bankruptcy case pending. A debtor should check the appropriate box to indicate the basis for the choice of venue.

A foreign representative commencing a case under chapter 15 by filing a petition for recognition of a foreign proceeding should file the petition (1) in the district in which the foreign debtor has its principal place of business or principal assets in the United States, or, (2) if the debtor does not have a place of business or assets in the United States, in the district in which there is an action or proceeding against the debtor pending in a federal or state court, or, if neither (1) nor (2) applies, in a district where the location “will be consistent with the interests of justice and the convenience of the parties, having regard for the relief sought by the foreign representative.” A checkbox has been provided for the foreign representative to indicate the basis for venue.

### **Statement by a Debtor Who Resides as a Tenant of Residential Property**

Although § 362 of the Bankruptcy Code provides for the automatic stay of actions against the debtor or the debtor’s property when a bankruptcy case is filed, this stay may be limited in duration or not in effect with respect to a landlord’s judgment against the debtor for unpaid rent on the debtor’s residence. If the debtor resides as a tenant of residential real property, and the landlord has a judgment for possession of the debtor’s residence, the debtor must complete the above-titled section of the petition regarding status of the debtor’s lease. 11 U.S.C. § 362(l)(5). The debtor must check the box stating the existence of the landlord’s judgment and provide the name and address of the landlord. If the law of the state, city, or other locality in which the debtor resides permits a tenant to cure a monetary default after a judgment has been entered, the debtor should check the box which states that fact. If, in addition, the debtor has included with the bankruptcy petition a deposit of any rent that would become due during the 30 days after the filing of the bankruptcy petition, the debtor also should check the box stating that fact. A debtor who is not a tenant, or who is a tenant whose rent is current or whose rent is not current but against whom the landlord has not obtained a judgment on the date the petition is filed, should leave this section blank.

### **Signatures**

The signature page of the form is where the debtor requests relief in accordance with the chapter of title 11 (the Bankruptcy Code) specified on the first page of the petition form. Signing also indicates to the court that the debtor, in fact, is requesting relief under the Bankruptcy Code. Signing and filing combine to make the petition operative, that is, to make the petition a legally effective document.

Bankruptcy Rule 1008 requires a petition to be verified (sworn to under oath) or contain an unsworn declaration as provided in 28 U.S.C. § 1746. The unsworn declarations in the signature areas on page 3 of the petition conform to § 1746, which permits the declaration to be made in the language provided in § 1746 with the same force and effect as a sworn statement. In other words, by signing the petition, the debtor(s) is (are) declaring, under penalty of perjury, that the information in the petition is true and correct.

The debtor(s) must sign the petition in the appropriate signature block on page 3, either the “Individual/Joint,” “Corporation/Partnership,” or “Foreign Representative” section. The choice of signature block should be consistent with the debtor’s response to “Type of Debtor” box on page

1. Unsigned papers will be stricken unless the omission of the signature is corrected promptly after being called to the attention of the attorney or party. Fed. R. Bankr. P. 9011(a).

An individual debtor must sign and date where indicated in the “Individual/Joint” section. A married couple filing a joint case must sign and date the petition as “debtor” and “joint debtor.” If the debtor is not represented by an attorney, the debtor should include the debtor’s telephone number so court personnel, the trustee, other parties in the case, and attorneys representing other parties can contact the debtor concerning matters in the case. Although the debtor’s telephone number should be stated in the petition if the debtor is not represented by an attorney, the telephone number is not included in the notice of the bankruptcy filing that is sent to all creditors.

The signature section for individual and joint debtors includes a declaration by chapter 7 consumer debtors that the debtor(s) is (are) aware of their right to proceed under chapters 7, 11, 12, and 13 of the Code and of the relief available under each chapter. If the debtor(s) is (are) not represented by an attorney and no non-attorney bankruptcy petition preparer signs the petition, the debtor(s) also must state that the debtor(s) have obtained and read the “Notice to Individual Consumer Debtor Under § 342(b) of the Bankruptcy Code,” which is Procedural Form B 201. (Consumer debts are debts incurred by individuals primarily for personal, family, or household purposes. 11 U.S.C. § 101(8).) Form B 201 describes the chapters of the Code under which an individual debtor may file and provides other information required by § 342(b), as described above in “Applicable Law and Rules.”

There is a separate signature block for debtors that are corporations or partnerships. Individual and joint debtors should leave this section blank. The individual authorized by the debtor entity (the corporation or partnership) to file the petition should sign the petition and include the individual’s title and the date on the lines provided. By signing the petition, the authorized individual is representing that the information in the petition is true and correct, and that the individual has been authorized to file the petition on behalf of the debtors. A corporation that files a bankruptcy case must be represented by an attorney. Certain corporate debtors filing chapter 11 petitions must also complete Exhibit “A” discussed above.

### **Signature of Attorney**

If an attorney is representing the debtor in the bankruptcy case, the attorney must sign and date the petition and set out the attorney’s name, address, and telephone number in the spaces provided. If a law firm is representing the debtor, the attorney in the firm who is handling the case should sign and date the petition and set out the attorney’s name as well as the law firm’s name, address, and telephone number. Fed. R. Bankr. P. 9011(a). Debtors who are not represented by an attorney should leave this section blank

**Signature of a Foreign Representative**

Under chapter 15 of the Bankruptcy Code, a foreign representative of a debtor in a foreign proceeding can apply for recognition of the foreign proceeding by a United States court. If the foreign proceeding is a foreign “main” proceeding, once recognition has been granted, the foreign representative can file a voluntary case in the United States on behalf of the debtor under an appropriate chapter of the Bankruptcy Code. (The chapter 15 case and any case filed by the foreign representative under another chapter of the Code will be ancillary to the foreign proceeding.) 11 U.S.C. § 1501 *et seq.* The foreign representative must use Official Form 1 to apply for recognition of the foreign proceeding, which commences a case under chapter 15 of the Code. If the foreign representative later determines to file a case on behalf of the debtor under one of the relief chapters of the Code, the foreign representative must use Official Form 1 again. The signature box for a foreign representative contains appropriate language and checkboxes for both types of filings. The foreign representative should check the box that describes the action being taken, either (1) a petition for recognition of the foreign proceeding (either “main” or “nonmain”) under chapter 15 or (2) a petition for relief under a different chapter of the Code specified on page 1 of the petition form. The foreign representative should provide the representative’s name and sign and date the petition in the spaces provided and attach all required documents.

**Signature of Non-Attorney Bankruptcy Petition Preparer**

Section 110 of the Bankruptcy Code requires a non-attorney bankruptcy petition preparer to sign every document that the bankruptcy petition preparer prepares for filing by the debtor. Section 110 of the Code also requires the bankruptcy petition preparer to make certain disclosures to the debtor and to the court, to provide the debtor with certain notices including the “Notice to Individual Consumer Debtor Under § 342(b) of the Bankruptcy Code,” and to inform the debtor of any maximum fee set by the Judicial Conference of the United States for the services of a bankruptcy petition preparer. 11 U.S.C. § 110. This signature section provides for the bankruptcy petition preparer to certify all necessary matters. The bankruptcy petition preparer should provide all the information specified in the blanks in this box and sign and date the petition in the spaces marked “X” and “Date,” respectively. Unless a debtor uses the services of a bankruptcy petition preparer, this section should be left blank.